



# California Regional Water Quality Control Board

## Santa Ana Region



**Linda S. Adams**  
Secretary for  
Environmental Protection

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**Arnold Schwarzenegger**  
Governor

February 27, 2009

Deborah Strunk  
City of Orange  
230 East Chapman Avenue  
Orange, CA 92866

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR THE SANTIAGO BIKE TRAIL – TUSTIN BRANCH TRAIL,  
CITY OF ORANGE, ORANGE COUNTY (ACOE REFERENCE NO. 2008 – 1145 –  
MAS)**

Dear Ms. Strunk:

On November 19, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification"), submitted on your behalf by ICF Jones and Stokes, for the construction of the Santiago Bike Trail – Tustin Branch Trail, in the City of Orange. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments ("Basin Plan"):

**Project Description:** Extension of the Santiago Creek Class 1 bike trail from its current terminus at Tustin Street/La Veta Avenue to the intersection of Wanda Road and Collins Avenue. Approximately 7,750 feet of the trail will be constructed along Santiago Creek and 2,500 feet will be constructed within City-owned railroad right-of-way. Construction of the trail includes two pre-fabricated pedestrian bridges: one adjacent to the Chapman Avenue over-crossing and the 55 Freeway/Chapman Avenue off-ramp, and the other south of Walnut Avenue. A v-ditch near Palm Avenue will be relocated and two under-crossings will be constructed at the 55 Freeway off-ramp and Chapman Avenue. The project is located in an un-sectioned portion of Township 4 South, Range 9 West, of the U.S. Geological Survey *Orange*,

**California Environmental Protection Agency**



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*California*, 7.5-minute topographic quadrangle map (33 deg. 47 min. 29 sec. N/ -117 deg. 49 min. 35 sec. W).

Receiving water: Santiago Creek.

Fill area: See Table 1 below.

Table 1: Impacts to Waters of the U.S.

Water-body type	Permanent fill (acres/linear feet)	Temporary fill (acres/linear feet)
Wetland	0.001/60	0.06/107
Perennial Stream	0.005/39	0.10/271

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 42.

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The proposed mitigation is summarized below:

**Onsite Water Quality Standards Mitigation Proposed:**

- Temporary excavations in waters of the State will be re-vegetated.
- Trash receptacles and educational signage will be placed at locations to be determined by the City of Orange.
- Site-specific best management practices ("BMPs") will be specified in the project Water Quality Management Plan ("WQMP") and Storm Water Pollution Prevention Plan ("SWPPP").

**Offsite Water Quality Standards Mitigation Proposed:**

- The City will eradicate 0.012 acre of invasive plant species in Santiago Creek or pay an in-lieu fee towards the eradication of 0.012 acre of invasive plant species within the Santiago Creek Watershed.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those



impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2002-0010, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2002-0010 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, including the preparation of a SWPPP.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2003-0061, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2003-0061 at: [www.waterboards.ca.gov/santaana/pdf/03-61.pdf](http://www.waterboards.ca.gov/santaana/pdf/03-61.pdf).

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act ("CEQA"), the City of Orange adopted a Mitigated Negative Declaration for the Santiago Bike Trail – Tustin to Collins on March 25, 2007. Pursuant to California Code of Regulations, Title 14, Section 15096, subdivision (f), the Regional Board must consider the environmental effects of the project as shown in the associated negative declaration prior to reaching a decision on the project. The Regional Board has considered the City's Mitigated Negative Declaration in the issuance of this Certification and finds that changes or alterations have been required, or incorporated into the proposed project, which avoid or mitigate impacts to water quality to a less than significant level.

**This 401 Certification is contingent upon the execution of the following conditions:**

1. Project activities must not depress the dissolved oxygen content of receiving waters below 5 mg/L as a result of controllable water quality factors. When natural dissolved oxygen content is less than 5 mg/L, the discharger must not cause further depression.
2. Project activities must not raise the pH of receiving waters above 8.5 or lower pH below 6.5 as the result of controllable water quality factors.
3. Project-related activities shall not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in receiving waters to be increased by values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:
  - a. If natural turbidity is between 0 and 50 NTU, the maximum increase shall not exceed 20% of the measured natural turbidity.



- b. If natural turbidity is 50 to 100 NTU, the increase shall not exceed 10 NTU.
- c. If natural turbidity is greater than 100 NTU, the maximum increase shall not exceed 10% of the measured natural turbidity.
- 4. An effective monitoring plan must be developed and implemented to document compliance with conditions 1, 2, and 3 above. Any suspected violation of these conditions must be reported to Regional Board staff in writing within 24-hours of discovery. The monitoring plan and records of monitoring activities must be maintained on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.
- 5. The City of Orange must implement a program to eradicate 0.012 acre of invasive plant species in Santiago Creek or pay an in-lieu fee to an entity for the eradication of 0.012 acre of invasive plant species in waters of the State in the Santiago Creek Watershed. If the City of Orange elects to implement an eradication program, the City must :
  - a. proceed according to published and generally accepted methods, with follow-up maintenance for a minimum of 6-years;
  - b. conduct initial eradication work within 60-days of the completion of the proposed project; and
  - c. provide a report to the Executive Officer, by May 27, 2009, identifying the location of the eradication work site, identifying any previous regulatory or mitigation commitments associated with the site, and certifying, under penalty of perjury, that the work will proceed in sole satisfaction of the requirements of this Certification and other state or local permits or licenses for the proposed project.
- If the City of Orange elects to pay an in-lieu fee, the City must:
  - d. include funding for follow-on maintenance for a minimum of 6-years; and
  - e. provide evidence of the in-lieu fee payment to the Executive Officer by May 27, 2009
- 6. This Certification and any subsequent amendments must be maintained on site as a denoted element of any project SWPPP or WQMP.
- 7. The discharger must comply with the requirements of the Clean Water Act Section 404 Permit.

**Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:**

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.



- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

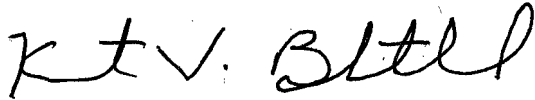
This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at:

[www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)



Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



for GERARD J. THIBEAULT  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Melanie Spalder  
State Water Resources Control Board, OCC – David Rice  
State Water Resources Control Board, DWQ – Water Quality Certification Unit  
California Department of Fish and Game – Erinn Wilson  
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR- 8

APF:401/certifications/Santiago bike trail 302008-30

